

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CAROLINE LEE,

Plaintiff,

v.

FRANK BISIGNANO, Commissioner of
Social Security,

Defendant.

Case No. 2:20-cv-0662-JDP (SS)

ORDER

Plaintiff's counsel seeks an award of attorney fees under 42 U.S.C. § 406(b).¹ ECF No. 33. Plaintiff entered into a contingent fee agreement providing that he would pay counsel twenty-five percent of any award of past-due benefits. ECF No. 33-2 at 1. After this court remanded for further proceedings, plaintiff was found disabled and awarded \$126,928 in past-due benefits. ECF No. 33-1 at 1. Plaintiff's counsel requests \$26,616.25 in attorney fees, which is less than the statutory maximum, and which equates to an effective hourly rate of \$879.88. ECF No. 33 at 4.

An attorney is entitled to reasonable fees for successfully representing social security claimants in district court.

¹ Although the motion for fees was filed under plaintiff's name, plaintiff's counsel is the real party in interest. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 798 n.6 (2002).

Whenever a court renders a judgment favorable to a claimant under this subchapter who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment.

42 U.S.C. § 406(b)(1)(A). Rather than being paid by the government, fees under section 406(b) are paid by the claimant from the awarded past-due benefits. *Crawford v. Astrue*, 586 F.3d 1142, 1147 (9th Cir. 2009) (en banc) (citing *Gisbrecht*, 535 U.S. at 802). The twenty-five percent statutory maximum fee is not an automatic entitlement; the court must ensure that the requested fee is reasonable. *Gisbrecht*, 535 U.S. at 808-09 (“We hold that § 406(b) does not displace contingent-fee agreements within the statutory ceiling; instead, § 406(b) instructs courts to review for reasonableness fees yielded by those agreements.”). In assessing whether a fee is reasonable, the court should consider “the character of the representation and the results the representative achieved.” *Id.* at 808. A “court may properly reduce the fee for substandard performance, delay, or benefits that are not in proportion to the time spent on the case.” *Crawford*, 586 F.3d at 1151.

The court finds that the requested fees are reasonable. Counsel’s billing records reflect a total of 30.25 hours of attorney time on this case. ECF No. 33 at 7. Counsel’s request for \$26,616.25, which is less than the statutory maximum, would constitute an hourly rate of approximately \$879.88 for attorney services.² Counsel did not engage in dilatory conduct or perform in a substandard manner. Indeed, counsel’s representation resulted in this matter being remanded for further proceedings, which resulted in a favorable decision and an award of benefits. *See* ECF Nos. 27 & 33-1. Given counsel’s experience, the result obtained in this case,

² Plaintiff’s counsel suggests that his hourly rate should be calculated from the total amount requested in the instant motion, minus \$6,616.25 in fees previously awarded under the Equal Access to Justice Act. ECF No. 33 at 7; *see* ECF No. 32. Because the fees requested under 406(b) must be offset by the EAJA award—i.e., counsel must return the \$6,616.25 to plaintiff—the court calculates the effectively hourly rate by dividing the present request for \$26,616.25 by the total number of hours counsel worked on this matter. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (“[A]n EAJA award offsets an award under [§] 406(b), so that the amount of the total past-due benefits the claimant actually receives will be increased by the EAJA award up to the point the claimant receives 100 percent of the past-due benefits.”) (internal marks and citations omitted).

1 and the risk of loss in representing plaintiff, the court finds the hourly rate reasonable. *See, e.g.,*
2 *De Vivo v. Berryhill*, 2018 WL 4262007 (E.D. Cal. Sept. 6, 2018) (awarding fees at an effective
3 hourly rate of \$1,116.26); *White v. Berryhill*, No. cv 04-00331-AS, 2017 WL 11634804, at *3
4 (C.D. Cal. July 7, 2017) (awarding fees at an effective hourly rate of \$1,612); *Monica H. v.*
5 *Comm'r, Soc. Sec. Admin.*, No. 3:16-cv-2111-JR (D. Or. Jan. 25, 2021) (awarding fees at an
6 effective hourly rate of \$2,000); *Kelly Kay M. v. O'Malley*, No. 22-cv-1969-DDL, 2024 WL
7 4536462, at *3 (S.D. Cal. Oct. 21, 2024) (awarding fees at an effective hourly rate of \$1,923.07).

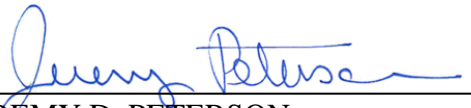
8 Counsel concedes that the \$6,616.25 award should be offset by the fees previously
9 awarded under the under the Equal Access to Justice Act ("EAJA"). ECF No. 32; *see* ECF No.
10 33. He also indicates that he will reimburse plaintiff the amount previously awarded under the
11 EAJA. *See Gisbrecht v. Barnhart*, 535 U.S. 789, 796 (2002) (holding that where attorney's fees
12 are awarded under both EAJA and § 406(b), the attorney must refund the smaller of the two
13 awards to the plaintiff).

14 Accordingly, it is hereby ORDERED that:

- 15 1. The motion for attorney fees, ECF No. 33, is GRANTED.
- 16 2. Plaintiff's counsel is awarded \$26,616.25 in fees pursuant to 42 U.S.C. § 406(b).
- 17 3. Upon receipt of the \$award, counsel shall refund to plaintiff the sum of \$6,616.25
18 previously awarded under the EAJA.

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20 IT IS SO ORDERED.

21 Dated: November 7, 2025

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23 JEREMY D. PETERSON
24 UNITED STATES MAGISTRATE JUDGE
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